

No. 01

05-954 JAN 7 2005

In The OFFICE OF THE CLERK  
Supreme Court of the United States

PIPER JAFFRAY & CO., and  
ROBERT ENGLISH, et al.,

*Petitioners,*

v.

STEPHEN C. TOMAZICH,

*Respondent.*

On Petition For Writ Of Certiorari  
To The Montana Supreme Court

PETITION FOR WRIT OF CERTIORARI

Counsel:

STANLEY T. KALECZYC  
BROWNING, KALECZYC, BERRY  
& HOVEN, P.C.  
139 N. Last Chance Gulch  
P.O. Box 1697  
Helena, Montana 59624  
(406) 443-6820

*Counsel of Record*

JOHN S. LUTZ  
TAMARA A. HOFFBUHR  
FAIRFIELD AND WOODS, P.C.  
1700 Lincoln, Suite 2400  
Denver, Colorado 80203  
(303) 830-2400

*Counsel for Piper Jaffray & Co.,  
and Robert English*

## QUESTIONS PRESENTED FOR REVIEW

1. Whether the Montana Supreme Court violates the Federal Arbitration Act through its judicially imposed requirement that pre-dispute arbitration clauses commonly contained within securities industry customer agreements must be explained to the customer *before the agreement is even executed*, which stands in direct conflict with the State Supreme Courts of Alabama, California, Ohio, and South Dakota?
2. Whether the Montana Supreme Court impermissibly interferes with the relationship between broker-dealers and their customers in violation of the Commerce Clause through its invalidation of pre-dispute arbitration clauses commonly contained within securities industry customer agreements, which practice comports with the Supreme Judicial Court of Maine but contradicts at least three U.S. Courts of Appeals and sixteen State Supreme Courts?

## **PARTIES**

Petitioner Piper Jaffray & Co. ("Piper Jaffray"), defendant below, is a registered broker-dealer conducting business in all 50 states, including Montana. At all times material to this case Piper Jaffray conducted business at, among other locations, its Branch Office in Butte, Montana.

Petitioner Robert English, defendant below, was at all times material the Piper Jaffray Branch Office Manager in the Butte Branch.

Defendant Thomas J. O'Neill was at all times material the Piper Jaffray Account Executive for the Respondent.<sup>1</sup>

The plaintiff below, Respondent here, filed a complaint in the underlying action focused strictly on alleged misconduct involving a Self Directed IRA Account.<sup>2</sup> In opening said account, Respondent signed a Self Directed IRA Account Agreement with Piper Jaffray containing a pre-dispute arbitration clause, typical of the clauses approved by the Securities regulators and used throughout the securities industry nationwide. Respondent was at all times material a citizen of Montana and maintained the account at issue with Piper Jaffray's Butte office.

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<sup>1</sup> Mr. O'Neill is not represented with respect to this Petition.

<sup>2</sup> Respondent's underlying complaint may be found at App. 26-53.

**RULE 29.1 LISTING**

Piper Jaffray & Co. was formerly U.S. Bancorp Piper Jaffray Inc., a wholly owned subsidiary of U.S. Bancorp. During the pendency of this litigation, the name and ownership of U.S. Bancorp Piper Jaffray Inc. changed in connection with the spin-off by U S Bancorp of its capital markets business on December 31, 2003. To effect the spin-off, U.S. Bancorp contributed its capital markets business, including U.S. Bancorp Piper Jaffray Inc., to a newly formed subsidiary, Piper Jaffray Companies, and subsequently distributed all of the shares of Piper Jaffray Companies to the shareholders of U.S. Bancorp. In connection with the spin-off, U.S. Bancorp Piper Jaffray Inc. changed its name to Piper Jaffray & Co. and became a wholly owned subsidiary of Piper Jaffray Companies, a publicly traded company whose shares are traded on the New York Stock Exchange under the symbol "PJC."

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## PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a Writ of Certiorari to review the judgment of the Supreme Court of Montana in the following case.

### Citation to Official and Unofficial Reports:

*Stephen C. Tomazich v. U.S. Bancorp Piper Jaffray Inc., et al.*, 2005 MT 243N, 120 P.3d 811 (App. 1-3).

This case relies upon and expressly adopts the holdings and analysis set forth in *Willems v. U.S. Bancorp Piper Jaffray Inc., et al.*, 2005 MT 37, 107 P.3d 465,<sup>3</sup> which is one of twenty-three civil cases arising out of allegations of misconduct by Mr. O'Neill, Mr. English and Piper Jaffray with respect to the accounts of the respective plaintiffs.

## JURISDICTION

The Montana Supreme Court rendered its decision on September 27, 2005. Justice O'Connor granted an extension of time up to and including January 27, 2006 to file the Petition for Writ of Certiorari. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

Commerce Clause, U.S. Const., art. 1, § 8, cl. 3:

The Congress shall have the Power . . .

To regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.

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<sup>3</sup> The *Willems* case has been settled and therefore no Petition is being filed with respect to that case.